IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5210 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHIRSING ALIAS DEVENDRASING ALIAS SEVAKSING

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5210 of 2004

MS DR KACHHAVAH for Petitioner No. 1

MR KAMLESH KACHHAVAH for Petitioner No. 1

MRS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 28/09/2004

ORAL JUDGEMENT

By means of filing this petition, the petitioner

has challenged the order of detention dated 23-2-2004 passed by the Police Commissioner, Surat City against the detenu who has been declared as a dangerous person.

2. It is a settled principle of law that in order to bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, her activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. Heard learned advocate for the petitioner and learned AGP for the State. Also perused the material on record. According to learned advocate for the petitioner, the detaining authority has based on four criminal cases registered against the detenu with DCB Police Station, Surat City under the Arms Act and lst offence was registered against the detenu on 21-1-2004 as reflects from page 16 and has relied upon the statements of two independent witnesses recorded on 12-2-2004 and 13-2-2004 which were verified on 17-2-2004 in passing the order of detention on 23-2-2004. It is further argued that brother of the detenu has made a written representation to the detaining authority and it was handed over personally on 27-2-2004. Same was forwarded to the State Government on 28-2-2004 by the detaining authority. He has taken me through the repy filed by the detaining authority on page 13 para 12 which confirm his say wherein it was stated on oath that representation dated 27-2-2004 was forwarded to the State Government on 28-2-2004. Showing the same, he has taken me through the affidavit filed by the State Government more particularly at page 3 wherein the concerned person has categorically stated that "the order of detention is 23-2-2004 and the petitioner was detained on 23-2-2004. I say that the order of detention was approved on 29-2-2004 and the reference to PASA Advisory Board was made on 11-3-2004". He has argued further that written representation was handed over to the detaining authority before the order

passed by the authority was approved by the State Government and, therfore, instead of deciding the representation, it has been wrongly forwarded by the detaining authority to the State Government. He has relied upon the case of Harish Pahwa Vs. State of U.P. and others, AIR 1981 S.C. 1126, more particularly para 3 which runs as under:

> "The representation made by a detenu has to be considered without any delay. The Supreme Court does not look at equanimity upon delays when the liberty of a person is concerned. Calling comments from other departments, seeking the opinion of Secretary after Secretary and allowing the representation to lie without being attended to is not the type of action which the State is expected to take in a matter of such vital importance. It is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Where this is not done the detention has to be declared unconstitutional."

4. I find substance in the said argument and he succeeds only on that ground and, therefore, he does not press any other grounds. Learned AGP has fairly admitted the same. No satisfactory explanation could be putforward by the authorities though filed affidavits. Hence, in view of the aforesaid judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 23-2-2004 passed against the detenu Dhirsing alias Devendrasing alias Sevaksing is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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